

## Considering and Adopting Rate of Growth (Growth Cap) Ordinances

A municipality may consider adopting one of three (3) different kinds of growth caps:

1. A temporary cap adopted in order to limit development so that the town has sufficient time to get its regulatory and investment house in order;
2. A "differential growth cap" or "rural cap," which is a growth cap that applies only in locally designated rural areas, and which serves as a growth management tool to direct most of a town's growth to designated growth areas; and
3. Permanent, ongoing townwide caps.

The State Planning Office supports the use of a temporary cap when a town has not had sufficient time to plan for its development. The temporary cap should have a sunset clause built in, and the duration of the cap should be only as long as the town will require to address the unexpected growth through additional planning, investment, and/or regulation.

In general, the State Planning Office encourages towns to consider rural growth caps as a useful, but underused, tool for managing and directing growth in communities. This type of growth cap can be a critical part of a town's strategies for directing growth toward locally designated growth areas and away from rural areas the town has chosen to preserve.

The State Planning Office does not advocate adoption of permanent, ongoing townwide growth caps.

Recent statutory changes require a town with a growth cap to "review and update the ordinance at least every 3 years to determine whether the rate of growth ordinance is still necessary and how the rate of growth ordinance may be adjusted to meet current conditions" (Title 30-A, §4360). In addition, "After January 1, 2003, any portion of a municipality's or multimunicipal region's rate of growth, zoning or impact fee ordinance must be consistent with a comprehensive plan adopted under this subchapter" (Title 30-A, §4314). (For more information on the January 1, 2003 deadline, see the Frequently Asked Questions on the 2003 Deadline published by the State Planning Office.)

Without legislative direction or guidance on the issue of consistency of a growth cap with a local comprehensive plan, the State Planning Office will use the following criteria to guide our review of towns' plans on this subject:

In order for a rate or growth (growth cap) ordinance to be considered "consistent with a comprehensive plan adopted under this subchapter," the comprehensive plan itself must have been found consistent by the State Planning Office with the Planning and Land Use Regulations Act, 30-A MRSA section 4301 et seq., and there must be a clear justification in the comprehensive plan that:

- (1) Identifies existing or projected capacity problems regarding municipal facilities and services;
- (2) Provides a strategy in the capital investment plan for increasing capacity regarding municipal facilities and services;
- (3) Links the proposed rate of growth ordinance to an allocation of existing and future capacity regarding municipal facilities and services;

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- (4) Provides a basis for the amount of growth to be allowed under the rate of growth ordinance that considers the municipality's historic growth rates and its reasonable share of future growth anticipated in the region;
- (5) Considers the impact of the rate of growth ordinance on housing affordability; and
- (6) Considers the impact of the rate of growth ordinance on neighboring communities.

If the town anticipates making the case that it cannot “afford” to make the necessary capital investments to address current and projected capacity problems, the comprehensive plan should discuss the town’s tax burden relative to other communities in the region, as well as to discuss other financial management strategies it might explore to provide necessary resources.

In the definition of the appropriate number of dwelling units to allow each year, the State Planning Office encourages the town to strongly consider that the number of permits issued annually under the rate of rate of growth ordinance be no less than the average annual number of permits issued by the municipality for the 10 years prior to adoption of the rate of growth ordinance. In addition, the town should strongly consider exempting residential housing units affordable to low income residents, possibly providing for a requirement to assure that these units, as built, will be sold or rented for a price that is affordable in the region, and that the affordability will be maintained in subsequent resale or future rental of the units.

SPO does not have a model building permit cap ordinance. However, the Office has collected a package of materials on building caps that is available for a nominal fee. The Office may also loan out this material to towns that would like to borrow or photocopy it.

Growth caps are becoming increasingly common in Maine. Kittery has proposed a rural cap (though the ordinance has not yet been developed), nine other York County towns are considering rural caps, and Durham has adopted a temporary townwide cap that has a lower number of allowable permits in its rural area. Falmouth has adopted a permanent townwide cap that addressed many of the State Planning Office's concerns over these types of caps. Your Regional Planning Council can also provide technical assistance and additional information on rate of growth ordinances (growth caps) (<http://www.state.me.us/spo/landuse/techassist/regcouncil.php>).